TABLE OF CONTENTS

	PAGE
Statement of the Case	1
Summary of Argument	7
Argument	12
I. Power of the state to escheat personal property	12
II. Compliance with due process	20
1. Appellant has no standing to question the constitutionality of the statute	20
2. No want of due process	21
III. Statute does not violate the constitutional prohibition against impairment of contracts	31
IV. Shares of capital stock of a New Jersey Corporation and dividends on such shares of stock are subject to escheat to the State of New Jersey	39
Conclusion	48
Appendix	1a

TABLE OF CASES

Anderson National Bank v. Luckett, 321 U. S. 233, 88 L. Ed. 692 ..... 12, 15, 21, 22, 23, 38, 46

Attorney General v. Provident Institution for Savings, 201 Mass. 23, 86 N. E. 912 33

Baldwin v. Missouri, 281 U. S. 586, 74 L. Ed. 1056 19

Burgess v. Wheate, 1 Eden 177, 28 Eng. Rep. Full Reprint 652 12

PAGE

Breslin v. Fries-Breslin Co., 70 N. J. L. 274, 58 A. 313 32
Brooklyn Borough Gas Co. v. Bennett, 277 N. Y. S. 203, 154 Misc. 106 ..... 14, 33

Canada Southern R. R. Co. v. Gebhard, 107 U. S. 527, 538, 27 L. Ed. 1020, 1024 38
Clark v. Kansas City, 176 U. S. 114, 44 L. Ed. 392 20
Commonwealth v. Thomas' Administrators, 140 Ky. 789, 131 S. W. 797 12
Commonwealth ex rel. v. Reeder, 171 Pa. 505, 33 A. 141 18
Connecticut Mutual Life Ins. Co. v. Moore, 333 U. S. 541, 92 L. Ed. 863 ..... 15, 35, 46
Corry v. Baltimore, 196 U. S. 466, 49 L. Ed. 556 44

East New York Savings Bank v. Hahn, 326 U. S. 230, 90 L. Ed. 34 34
Escheat of Moneys in Custody of the United States Treasury, 322 Pa. 481, 184 A. 757 14

Farrington v. Tennessee, 5 Otto (95 U. S.) 679, 24 L. Ed. 588 18

Germantown Trust Co. v. Powell, 265 Pa. 71, 101 A. 441 14
Grayson v. Harris, 267 U. S. 352, 69 L. Ed. 652 40
Greves v. Shaw, 173 Mass. 205, 53 N. E. 372 41

Hollingsworth v. Barbour, 4 Pet. (29 U. S.) 466, 7 L. Ed. 922 23
Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 78 L. Ed. 413 ..... 32, 34
Hull Copper Co., In re, 46 Ariz. 270, 50 P. 2d 560 45

Isaacs v. Hobbs, 282 U. S. 734, 75 L. Ed. 645 38

Jellenik v. Huron Copper Mining Commission, 177 U. S. 1, 44 L. Ed. 647 ..... 41, 46

Lick v. U. S. Rubber Co., 39 F. Supp. 675 41
Liberty Warehouse Co. v. Tobacco Growers, 276 U. S. 71, 72 L. Ed. 473 20

PAGE

McCulloch v. State of Maryland, 4 Wheat. (17 U. S.) 316, 4 L. Ed. 579 17
McSweeney v. Equitable Trust Co., 16 N. J. M. 193, 198 A. 529 33
The Mary, 9 Cranch (13 U. S.) 126, 3 L. Ed. 678 22
Matter of People, 234 N. Y. 48, 136 N. E. 235 12
Melrose Ave., In re, 234 N. Y. 48, 136 N. E. 235 13
Montello Salt Co., In re, 88 Utah 283, 53 P. 2d 727 ....14, 45
Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306, 94 L. Ed. 865 .....22, 26, 29, 30

Neilson v. Russell, 78 N. J. L. 40, 69 A. 476 .....10, 32, 41, 43
Newark Fire Insurance Co. v. State Board, 307 U. S. 313, 83 L. Ed. 1312 .....42, 46

Pennington v. Fourth National Bank, 243 U. S. 269, 61 L. Ed. 713 44
Pennoyer v. Neff, 95 U. S. 711, 24 L. Ed. 565 23
People ex rel. v. Durham Realty Corp., 230 N. Y. 429 .. 34
Philadelphia Co. v. Securities & Exchange Commission, 175 F. 2d 808 26
Philadelphia Electric Company Case, The, 352 Pa. 457, 43 A. 2d 116 .....10, 32, 45
Portland R. L. & P. Co. v. Railroad Commission, 229 U. S. 397, 57 L. Ed. 1248 39

Reading Company Case, 352 Pa. 457, 43 A. 2d 116 39
Roth v. Delane, 338 U. S. 226, 94 L. Ed. 6 15

Schuylkill Trust Co. v. Pennsylvania, 302 U. S. 506, 82 L. Ed. 392 44
Security Savings Bank v. California, 263 U. S. 262, 68 L. Ed. 301 .....10, 24, 30, 37, 45, 46
Southern Railroad Co. v. Allison, 190 U. S. 326, 47 L. Ed. 1079 42
Stuart v. Palmer, 74 N. Y. 183 31

Tax Commission v. Aldrich, 316 U. S. 174, 86 L. Ed. 1358 41

PAGE

Thorpe v. Rutland & Burlington Rd. Co., 27 Vt. 140 .. 17

Union Pacific R. R. Co. v. U. S., 99 U. S. 700, 25 L. Ed. 496 19

United States v. Klein, 303 U. S. 276, 82 L. Ed. 840 14

United States v. Klein, 106 F. 2d 213 15

Wallace v. Harmstad, 44 Pa. 492 12

Wheeler v. Smith, 9 How. (50 U. S.) 55, 13 L. Ed. 44 .. 18

Wiley Motors v. Unemployment Compensation Board, 130 N. J. L. 30, 31 A. 2d 39 21

Williams v. Armroyd, 7 Cranch (11 U. S.) 423, 432, 3 L. Ed. 392, 395 38

Williams v. North Carolina, 317 U. S. 287, 293, 87 L. Ed. 279, 283 37

Wuchter v. Pizzutti, 276 U. S. 13 30

STATUTES

Chapter 135, Session Laws of 1896, N. J. 42

Chapter 120, Session Laws of 1930, N. J. 42

Chapter 155, Session Laws of 1946, N. J. 2, 25

Chapter 357, Session Laws of 1947, N. J. 2

Act of Congress, June 25, 1948, c. 646 .... 9, 26

Act of Congress, May 24, 1949, c. 139 .... 9, 26

Act of Congress, May 26, 1790, c. 11 37

28 U. S. C. 2001 .... 9, 26

308 U. S. 618, 84 L. Ed. 517 15

28 U. S. C. 687 37

OTHER AUTHORITIES

	PAGE
31 Harvard Law Review 905	43
1 Kent's Commentaries 447	17
Waple's "Proceedings in Rem" 88	23
Art. IV. Sec. 1	37
18 C. J. S. 1104, Title "Corporations," Sec. 463	42
30 C. J. S. 1167, Title "Escheats," Sec. 3a	13
Re Barnett's Trusts (1902), 1 Ch. (Eng.) 847, 3 B. R. C. 198	7

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.

No. 384.

STANDARD OIL COMPANY,

Appellant,

vs.

THE STATE OF NEW JERSEY, by Theodore D. Parsons, Attorney General of the State of New Jersey.

APPELLEE'S BRIEF.

STATEMENT OF THE CASE.

Standard Oil Company, appellant herein, is a corporation organized in 1882 under the laws of the State of New Jersey, and still subsists under that franchise grant. It maintains its registered office at Flemington, New Jersey, where its stockholders' meetings are held, but transacts no other business in New Jersey (R. 90).

At the time of its incorporation, the company's authorized capital stock was $3,000,000.00, and has since been increased several times.

From time to time, the company has issued shares of its capital stock, and at various times it has declared dividends on its shares of capital stock.

The owners of certain of the shares of stock issued by the company have been unknown or their whereabouts have been unknown for more than fourteen years. The persons in whose names the said shares are listed on the records of the company have not been heard from by the company for more than fourteen years, and it has had no knowledge as to the address of such record owners during such period (R. 8, 25, 75, 77, 198, 199).

The major portion of the dividends declared by the company on its shares of stock have been paid, but certain of the dividends have been unclaimed for more than fourteen years, and the owners of or persons entitled to such dividends have been unknown or their whereabouts have been unknown for more than fourteen years (R. 8, 9, 74, 92, et seq.).

The New Jersey escheat statute (Chapter 155 of Session Laws of 1946, as amended by Chapter 357 of Session Laws of 1947, set forth in Appendix to Appellant's Brief, 1a, et seq.) provides, in Section 3, that whenever the owner, beneficial owner or person entitled to any personal property is unknown or his whereabouts is unknown for the period of fourteen successive years, or where any personal property is unclaimed for the period of fourteen successive years, such personal property shall escheat to the State.

The said statute provides a judicial proceeding to determine whether an escheat has occurred. Such proceeding is initiated, under the statute, by a petition setting forth, inter alia, that the defendant therein named has custody or possession of personal property subject to escheat under the statute. A copy of the petition must be served upon

such defendant, which is required to file an answer within a time limited. Such answer must give such information as the defendant may have with relation to the last known address of any person having any interest in, together with any other information relating to, such personal property. Upon the filing of the defendant's answer, a time and place for hearing is fixed by the court. A notice containing a summary of the order designating the time and place, as approved by the court, must be published in a manner directed by the court once a week for three successive weeks in a newspaper of general circulation designated by the court. Such notice must direct that any person who may claim to be entitled to the property sought to be escheated shall file his claim with the court at least five days before the time fixed for hearing. Any person claiming to be so entitled shall file his claim in the form of an answer to the petition. The court is required, at the time of hearing, to take such evidence as may be proper, and proceed to determine the cause and enter such final decree as shall be equitable and in conformity with the provisions of the act (Sections 7, 8, Appendix to Appellant's Brief, pages 2a, 3a, 4a).

Any decree of escheat automatically operates as a full, absolute and unconditional release and discharge of the defendant from any and all claim, demand or liability to any person other than the State Treasurer with respect to such property, and such decree may be pleaded as an absolute bar to any action brought against such defendant with respect to such property by any person other than the State Treasurer (Appendix to Appellant's Brief, page 5a, Sec. 10).

Any person whose property may have escheated to the State may, within two years after the filing of a final decree, apply to the court to reopen the decree, and upon proof of lack of actual knowledge of the escheat proceedings and

proof of ownership, the court may in its discretion reopen the decree and direct the State Treasurer to repay to the claimant the moneys received by the State Treasurer by reason of such decree, less the expenses and charges accrued or paid out by reason of the entry of the original decree (Appendix to Appellant's Brief, page 7a, Sec. 18).

On July 27, 1948, pursuant to the provisions of the above statute, the State of New Jersey instituted the present proceeding, naming the Standard Oil Company as defendant, for the escheat of the above mentioned shares of stock and dividends, as well as other personal property not presently before this Court. As required by the statute, the State filed a petition, setting forth the relevant facts, and served a copy upon the defendant. The defendant filed an answer, setting forth the names and last known addresses of persons entitled to dividends on its capital stock unclaimed over fourteen years (R. 14-24), and the names and last known addresses of the record owners of its capital stock where the whereabouts of such record owners had been unknown to it for fourteen years (R. 27-28). The defendant subsequently amended its answer. The answer and amended answer included the following defenses:

1. That the said dividends and shares of stock had no situs in New Jersey for the purpose of escheat (R. 209-211);

2. That the notice to the claimants provided by the statute was inadequate and insufficient to render the proceeding due process of law (R. 211-213);

3. That the statute impaired the contracts of the persons entitled to the dividends and shares of stock in violation of Article I, Section 10, paragraph 1 of the Constitution of the United States (R. 213-215); and

4. That because of the foregoing the judgment of the Court would not protect the appellant from liability to the claimants and stockholders whose dividends and stock were escheated to the State and that, therefore, such judgment would deprive the appellant of its property without due process of law (R. 209-215).

On March 21, 1949, the Court entered an order (R. 53), that a final hearing on the petition be held on April 27, 1949, and directed that notice of the time and place of such final hearing be given by advertisement once a week for three successive weeks in a newspaper of general circulation in Mercer County (in which the capital of New Jersey is located, and in which the Court sits), addressed to and containing the names and addresses of the persons apparently having an unclaimed beneficial interest in, or ownership of, the property sought to be escheated, and directing any of the said persons or corporations or any other person or corporation claiming a beneficial interest in, or ownership of, such property, to file with the Court his or its claim in writing, at least five days prior to the date fixed for hearing.

In accordance with the said order, publication was made by the State of New Jersey in the Trenton Times on March 25, April 4 and April 11, 1949. Proof of Publication was filed thereafter (R. 55-59 inc.).

No person filed a claim prior to the time fixed for hearing, and no person other than the State and the defendant appeared at the time and place fixed for hearing.

After hearing the evidence presented, and upon proof of publication, the Court, on December 8, 1949, entered a Final Decree (R. 232), by which it was ordered and adjudged and decreed that the said shares of stock and divi-

dends, as well as the other property set forth in the petition, had escheated to the State.

Upon appeal to the Supreme Court of New Jersey, the judgment was modified by excluding therefrom all claims barred by the operation of the Statute of Limitations of New Jersey (R. 252) and all property of persons whose names were not set forth in the published notice (R. 262). The Supreme Court held that the Statute of Limitations did not operate as to dividends, and the appellant did not contend that the shares of stock were affected by the Statute of Limitations.

The judgment, as modified, covers, therefore, the shares of stock and dividends of the persons whose names are contained in the published notice.

The Supreme Court of New Jersey rejected the defenses of the appellant (1) that the statute and the judgment denied due process to the owners of the shares of stock or dividends, (2) that the statute impaired the obligation of contracts, and (3) that the shares of stock and dividends of the Standard Oil Company, a New Jersey corporation, were not subject to escheat to New Jersey.

A dissenting opinion was filed as to the portion of the majority opinion dealing with notice. There was no dissent from the opinion of the Court as to impairment of contracts or situs.

The appellant has set forth that it intends to urge the assignments of error as to adequacy of notice, impairment of contracts and situs (Appellant's Brief, page 10).

SUMMARY OF ARGUMENT.

1. The State of New Jersey, like other states, has the power to take possession of real or personal property which is without an owner, either because the owner has died intestate without known heirs or next of kin, or because the owner has abandoned it, or because the owner is unknown or his whereabouts is unknown.

The use of the word "escheat" in the statutes providing for such taking is not to be considered as limiting the exercise of the power to those situations in which escheat occurred under the old common law in England. The word as used in the old common law can have no application in this country, because neither real nor personal property is held here by feudal tenures.

Under the old common law, only land escheated. Personal property, not held by tenures, was not subject to escheat. When title to personal property became vacant, it was termed "bona vacantia", and was taken by the Crown as a matter of right in the exercise of its sovereign power, *Re Barnett's Trusts* (1902), 1 Ch. (Eng.) 847, 3 B. R. C. 198.

In this country, where there are no feudal tenures, no distinction is made between real and personal property, and the sovereign power is termed "escheat", whether applied to real or personal property.

Not only has the term "escheat" been taken from the law of feudal tenures to apply to property not so held, and to personal as well as real property, but it applies to intangible property as well as tangible.

Further, the term of escheat applies not only where the owner has died intestate, leaving no known heirs or next

of kin, but it has been extended, as said above, to all cases where the sovereign power is exercised to take property of which the ownership is vacant, whether upon death of the owner, or because he has abandoned it, or because he is unknown or his whereabouts is unknown.

The power of escheat, as above defined, inheres in every state by virtue of its sovereignty. The terms and conditions under which it shall be exercised are defined by legislative enactment.

The power of escheat exists except insofar as it has been surrendered by virtue of the Federal Constitution. The Federal Constitution contains no restriction upon the power of escheat itself. To determine whether a statute by which the state provides for the exercise of the power of escheat violates any constitutional prohibition, we must look to the constitution.

The appellant asserts that the New Jersey escheat statute violates the Federal Constitution in two respects, first, that it does not afford to the unknown owners due process of law, and second, that it impairs the obligations of contracts.

2. The appellant's argument of want of due process is based upon the fact that the statute provided for notice by publication upon the unknown owners. Recognizing that this form of notice may be used where the owners or their whereabouts are unknown, the appellant asserts the statute is defective because, while it provides for a judicial procedure, and prescribes that a hearing shall be had to determine whether an escheat has occurred, the provision for publication is insufficient. The statute declares that "a notice containing a summary of the order designating a time and place of hearing, *as approved by the court*, shall be published *in a manner directed by the court* * * * once a week

for three successive weeks in a newspaper of general circulation *designated by the court.*"

The appellant asserts that the statute fails to provide adequate notice, because it is left to the court to decide what the notice shall contain. There is nothing in the statute which directs any notice which does not conform to due process, and it is implicit that the court, in approving the notice, will approve only what is consonant with due process. The language used in the statute is similar to that customarily used in providing for notice by publication. A recent illustration of this is seen in the Act of Congress, approved June 25, 1948, c. 646, as amended May 24, 1949, 28 U. S. C. 2001.

The appellant then states that the notice, as published, was inadequate. However, a reading of the published notice (R. 55, et seq.) sets forth the name of the court, the docket number, the caption, the nature of the proceeding, the time and place fixed for hearing, that the property sought to be escheated consists of shares of stock of the Standard Oil Company and dividends on shares of stock of the company, the name and last known address of the last known owner in each case, stating the number of shares owned by each and the amount of dividends to which each is entitled. The notice directs each such person and any other claimant to file his claim in the court, and states that unless cause to the contrary is shown, a decree of escheat may be entered.

Every element necessary to inform the owner or claimant of the facts is set forth in the notice. Notice and the opportunity to be heard constitute due process, and both are afforded in this case.

The appellant then asserts that publication in a newspaper in Trenton, New Jersey, the capital of the State, and

the place where the court sits, is not adequate. A similar contention was raised in *Security Savings Bank v. California*, 263 U. S. 282, 68 L. Ed. 301. In that case, publication was made in Sacramento, California, although the deposits sought to be escheated had been made in a bank located in another county. This court dismissed the objection, stating it was a matter for the legislature to consider, and, since the court of last resort of the state had considered the notice adequate, this court would not say the view of the legislature and the state courts was so unreasonable as to constitute a denial of due process.

3. The next point of attack by the appellant is that the statute impairs the obligation of contracts. This view is not tenable. The escheat statute merely substitutes the state for the unknown owner. Upon performance by the appellant, it is discharged of all liability. The unknown owner is given a right of action against the State after the decree of escheat, just as he had against the company before the decree of escheat. There is no impairment of any obligation of contracts.

Again, the statute of escheat is an exercise of the police power, and as said in *Philadelphia Electric Company Case*, 352 Pa. 457, 43 A. 2d 116 (1945):

> "The constitutional guarantee in such connection is likewise subject to an appropriate exercise of the State's police power."

The foregoing discussion has been upon the appellant's theory that a contractual relationship exists. This is not true, however, in New Jersey. As said in *Neilson v. Russell*, 76 N. J. L. 40, 69 A. 476 (Supreme Ct. 1901), stock in a New Jersey corporation is a proprietary right, relating to

"an anomalous species of intangible property that owes its existence solely to the laws of this State * * *"

Therefore, whether because the escheat statute makes no change in the obligation of contracts, or because the constitutional guarantee against the impairment of the obligation of contracts is subject to an appropriate exercise of the police power, or because no contractual obligation is involved, the appellant's objection falls.

4. The appellant asserts that the property here involved does not have a situs in New Jersey. It must be first noted that this is a factual question which has already been determined by the judgment below, and, in itself, has no relation to any constitutional question.

The concept of situs, as applied to tangible property, cannot be applied to intangibles, which can have no actual situs anywhere in the sense that real property or tangibles have. In the case of intangibles, it is not the quality of occupying space, but the element of control that governs. In the case of shares of stock in a corporation, and dividends on the stock, the State which gave the corporation life, and under whose authority it subsists, has dominion, through its control of the corporation. It must follow that such shares of stock and dividends must be held situate in the state of incorporation, in this case, the State of New Jersey.

ARGUMENT.

I. Power of the state to escheat personal property.

"Escheat", under the English common law, denoted an incident of feudal tenures of lands, and did not apply to lands held allodially. *Burgess v. Wheate*, 1 Eden 177, 28 Eng. Rep. Full Reprint 652. Personalty in England was not held under feudal tenures and did not escheat. However, the Crown took personal property under conditions paralleling those under which lands escheated. The taking was explained by the doctrine of bona vacantia. *Anderson National Bank v. Luckett*, 321 U. S. 233, 88 L. Ed. 692 (1943).

In the United States, where lands are held not by feudal tenures, but allodially, the States, without exception, have held that lands are subject to escheat to the State. The same word is used, although the basis is essentially different. As said in *Wallace v. Harmstead*, 44 Pa. 492, 501 (1863):

> "Nothing about it but the name is feudal."

Escheat of lands in this country is explained in *Commonwealth of Kentucky v. Thomas' Administrators*, 140 Ky. 789, 131 S. W. 797 (1910), as follows:

> "Where there is no original claimant, the property is taken possession of by the state for the benefit of all. A convenient and sufficient name is that given in the statute, 'Escheat'."

The term escheat has been applied in this country to the sovereign right of appropriation not only of lands, but of personal property as well. Justice Cardozo said, in *Matter*

of People (In re Melrose Avenue), 234 N. Y. 48, 136 N. E. 235 (1923):

> "Escheat in the days of Henry VI was the privilege of the feudal lord, exercised for his own good * * * Escheat today is not the privilege of one, but the collective right of all when the individual right has failed * * *
>
> "'Escheat' preserves the name, but ignores the origin of the feudal prototype * * *.
>
> "What was once an incident of tenure has become an incident of sovereignty. With tenures abolished, succession is by like right whether the subject of escheat is personal estate or real."

Forty-four of the States and Alaska have passed statutes which provide for the escheat of personal property as well as of real estate. (See Appendix, page 1a.)

It is immaterial whether the property is tangible or intangible. In 30 C. J. S. 1167, Title "Escheats", Sec. 3a, it is said:

> "The doctrine of escheats is, in effect, applied to personalty as well as to realty. The doctrine extends to intangible as well as to tangible property, and generally to all rights of property of any nature."

Escheat, under the feudal system, occurred when the owner of real property died intestate and without heirs. In this country, however, the concept of escheat is not so limited. Just as escheat applies to personal property as well as to real, to intangible as well as tangible, so does it apply not only when the owner has died intestate without any one to inherit, but also when the property is abandoned or unclaimed, or when the owner is unknown or his whereabouts are unknown.

In *Germantown Trust Co. v. Powell*, 265 Pa. 71, 77, 101 A. 441 (1919):

> "There can be no room for doubt that the Commonwealth, by virtue of its sovereign power, may take charge of property abandoned or unclaimed for a period of time, or which has no known owner."

In *Brooklyn Borough Gas Co. v. Bennett*, 277 N. Y. S. 203, 154 Misc. 106 (Supreme Ct., 1935), the court said:

> "The jurisdiction of a State over property within its borders under circumstances indicating an abandonment by the owners thereof has been repeatedly sustained."

In *Montello Salt Co.*, 88 Utah 283, 53 P. 2d 727 (1936), in which was involved a provision in the State constitution providing for the escheat of unclaimed shares of stock of Utah corporations, and of dividends on such shares, the court said:

> "That it is within the power of the legislature to determine what and when unclaimed shares or dividends of corporations may be forfeited or escheat may not be doubted from the authority of the provision of the constitution above quoted or without it * * *"

In the *Matter of Escheat of Moneys in the Custody of the United States Treasury*, 322 Pa. 481, 184 A. 757 (1936), the court said:

> "It is well settled that the State has power to take possession of unclaimed property as an escheat."

The foregoing case was affirmed on appeal to this court in *United States v. Klein*, 303 U. S. 276, 82 L. Ed. 840 (1938), in which it was said:

"Neither the nature of the suit in the district court nor the federal statutes preclude transfer of or change in the interest of the *unknown claimants*, either by judicial proceedings in the state court or otherwise, pending final disposition of the fund by the federal court" (Italics ours).

In a connected case, *United States v. Klein*, 106 F. 2d 213, (C. C. A. 3, 1939), the court said:

"Obviously an escheat proceeding cannot be defeated because the unknown owner cannot be located."

Certiorari denied, 308 U. S. 618, 84 L. Ed. 517.

Anderson National Bank v. Luckett, 321 U. S. 233, 88 L. Ed. 692 (1943), states:

"The escheat or appropriation by the State of property in fact abandoned or without an owner is as old as the common law."

In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541, 92 L. Ed. 863 (1947), it is said:

"The right of appropriation by the State of abandoned property has existed for centuries in the common law."

In *Roth v. Delano*, 338 U. S. 226, 94 L. Ed. 6 (1949), this court recognized the right of the State to escheat property abandoned by the owners or belonging to missing persons.

In the present case, the court below said (R. 251):

"In modern usage 'escheat' signifies the falling of property to the sovereign for want of an owner; and this category embraces not only property which has

no other owner, but also property whose owner or whose owner's whereabouts is unknown."

The use of the word "escheat" in this country is, therefore, merely the extension of the word to the concept that all property, real and personal, tangible or intangible, may be appropriated by the state, where it has been lost to the original owner, either upon his death leaving no one entitled by will or inheritance to succeed to his interest, or where it has been abandoned and the owner has failed to exercise dominion over it, or where the property's owner is unknown or his whereabouts is unknown, or where the property has no owner. This use of the term "escheat" to denominate the comprehensive right of the State to take and dispose of such personal property is manifested by the exercise of the power in the statutes of the various states, and supported by the judicial decisions. In the instant case, both the power of the State of New Jersey to enact such legislation and the validity of the statute have been affirmed by the court of last resort of the State.

The appellant's challenge of this power of the State is supported by nothing more than a reference to a long-since outmoded and inappropriate version of the old English common law, which has grown with the march of time and events, as is its great virtue, to have an entirely different concept of this power of the sovereign States.

The appellant has cited a number of English cases dealing with the power of the English Crown to take property which is bona vacantia. It seeks to distinguish between cases where the property is without an owner and those where the owner is unknown, with the implication that the Crown has no rights in the latter case. The appellant ignores the power of Parliament to enact legislation in either

situation. It cannot be supposed that Parliament lacks such power. As said in 1 Kent's Commentaries 447:

> "It is a principle in the English law that an act of Parliament, delivered in clear and intelligible terms, cannot be questioned, or its authority controlled in any court of justice * * *
>
> "If it should happen to be too palpable in its direction to attempt of but one construction, there is no doubt in the English law as to the efficacy of the statute. The law of the legislature is the supreme law of the land and demands obedience."

It could not be seriously argued that, if the British Parliament had enacted legislation similar to the New Jersey statute, there would be any doubt as to its validity.

What is true of the British Parliament is equally true of the New Jersey legislature, except insofar as its enactments are subject to the limitations imposed by the federal and state constitutions. As said in *Thorpe v. Rutland & Burlington Rd. Co.*, 27 Vt. 140, 142:

> "It has never been questioned, so far as I know, that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restricted by written constitutions."

The State of New Jersey is a sovereign and has all the sovereign powers not surrendered to the United States. As said in *McCulloch v. State of Maryland*, 4 Wheat. (U. S.) 316, 410, 4 L. Ed. 579, 602 (1819):

> "In America, the powers of sovereignty are divided between the government of the United States and those of the States. They are each sovereign, with respect

to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

The appellant recognizes the sovereignty of the State of New Jersey, but seeks to measure and limit its powers by a comparison with those of the British Crown. This it cannot do. As said in *Wheeler v. Smith*, 9 How. (U. S.) 55, 78, 13 L. Ed. 44, 55 (1850):

> "The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action instead of the prerogatives of the crown. The State, as a sovereign, is parens patriae."

The absolute extent of the powers which may be exercised by the legislature, except as limited by the state and federal constitutions, is set forth in *Commonwealth, ex. rel. v. Reeder*, 171 Pa. 505, 33 A. 141 (1895), as follows:

> "In that wide domain not included in either of those boundaries the right of the people through the legislature to enact such legislation as they choose, is absolute."

In *Farrington v. Tennessee*, 5 Otto (95 U. S.) 679, 24 L. Ed. 558 (1877), it is said:

> "Every state has a sphere of action where the authority of the National Government may not intrude. Within that domain the State is as if the Union were not."

When one asserts that a state is without power in any field of legislation, it must be assumed that he has examined the federal and state constitutions, and has found in one or the other a prohibition against the exercise of such power.

If so, he is required to point out the applicable constitutional provision. As said in *Baldwin v. Missouri*, 281 U. S. 586, 598, 74 L. Ed. 1056, 1063, 50 S. C. 436:

> "The burden is not in the State to establish the constitutionality of its laws * * * The burden rests upon him who assails a statute to establish its unconstitutionality."

It is presumed, when a legislature enacts a statute, that it has acted in accordance with its powers, and not in violation of any constitutional prohibition. As said in *Union Pacific R. R. Co. v. U. S. (Sinking Fund Cases)*, 99 U. S. 700, 719, 25 L. Ed. 496, 501 (1879):

> "Every possible presumption is in favor of the validity of a statute, and this presumption continues until the contrary is shown beyond a rational doubt."

When New Jersey entered the Federal Union in 1789, it did so as an independent sovereign in which its citizens retained all the right, privileges and powers of a democratic people, except those which were specifically surrendered to the Federal Union. The powers not surrendered, and therefore retained by the people of New Jersey, included that of dealing with real and personal property whose owner or whose owner's whereabouts is unknown, or which is abandoned or unclaimed or without an owner, and the power to "escheat" such property under such conditions as it should, by its legislature, prescribe, subject, always, to the limitation that such conditions do not otherwise infringe upon the federal constitution.

For many years the State of New Jersey, by statute, has provided for the escheat of real property. Not until 1946

did it provide a judicial procedure to ascertain and escheat personal property, including intangibles. The escheat of intangibles had originally not been of much moment, but the important economic advancements which brought an increase in the variety, number and amount of intangible property, have required that the State of New Jersey, like other states, provide a method of dealing with such property when, in the opinion of the legislature, such property should be escheated to the State.

II. Compliance with due process.

1. *The appellant has no standing to question the constitutionality of the statute.*

The appellant is not, of course, the owner of the property involved, either the shares of stock or the unclaimed dividends, but is a mere stakeholder, with no legal or moral right to the res. It can not, therefore, argue due process as to the unknown owners, because, as to the escheated property, it has no interest. As said in *Clark v. Kansas City*, 176 U. S. 114, 44 L. Ed. 392 (1899):

> "A court will not listen to an objection made to constitutionality of an act by a party whose rights it does not affect, and who therefore has no interest in defeating it."

In *Liberty Warehouse Co. v. Tobacco Growers*, 276 U. S. 71, 88, 72 L. Ed. 473, 479 (1927), the Court said:

> "In order to prevail here, the warehouse company must show that enforcement of the challenged judgment would deprive it—not another—of some right

> under the Constitution or laws of the United States properly asserted here."

It must be concluded that the appellant is not affected by the decree of escheat, is not deprived of any right, and, therefore, it has no standing to question the constitutionality of the statute.

2. *No want of due process.*

Even if the appellant were entitled to raise the question of constitutionality, its argument that the judgment was lacking in due process is not tenable.

The appellant centers its attack upon the question of notice, asserting that the notice provided by the statute was inadequate and that the notice actually given was likewise inadequate.

The appellant, which for more than fourteen years has not known the whereabouts of the owners of the stock and dividends, accepts the fact that in the very nature of the case, no personal service of notice can be made upon such owners, and that a substitute form of notice is all that the situation permits. It is this substitute in the statute and in the proceedings below which the appellant attacks.

In *Wiley Motors v. Unemployment Compensation Board*, 130 N. J. L. 30, 31 A. 2d 39 (Supreme Ct. 1943), due process is defined as follows:

> "The guaranty of due process demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained."

On the question of due process in the field of notice of proceedings affecting property interests, this court said, in *Anderson National Bank v. Luckett*, 321 U. S. 233:

> "What is due process affecting property interests must be determined by taking into account the purpose of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case."

See also *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 94 L. Ed. 865 (1950).

The purpose of the escheat proceeding is only to determine the disposition of the property. No personal judgment or decree against the unknown owners is sought.

In such cases notice of the proceedings may be by virtue of the statute itself, or by seizure of the res, or by some other means directed by the statute.

In *Anderson National Bank v. Luckett*, 321 U. S. 233, 88 L. Ed. 692 (1943), the court said:

> "The statute itself is notice to all depositors of banks within the State, of the conditions on which the balances of inactive accounts will be presumptively abandoned, and their surrender to the State compelled. All persons having property within a State and subject to its dominion, must take note of the statutes affecting the control or disposition of such property and the procedure they set up for those purposes."

That seizure of the property is notice to the owner has long been recognized. In *The Mary*, 9 Cranch (13 U. S.) 126, 144, 3 L. Ed. 678, 684 (1815), the court said:

> "Where these proceedings are against the person, notice is served personally, or by publication; where they are in rem, notice is served upon the thing itself. This is notice to all those who have any interest in the thing and is reasonable because it is necessary, and be-

cause it is the part of common prudence for all those who have any interest in it, to guard that interest by persons who are in a position to protect it."

In *Pennoyer v. Neff*, 95 U. S. 714, 727, 24 L. Ed. 565, 570 (1877), the court said:

"The law assumes that property is always in the possession of the owner, in person or by an agent, and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to the proceedings authorized by law upon such seizure for its condemnation and sale."

In *Hollingsworth v. Barbour*, 4 Pet. (29 U. S.) 466, 475, 7 L. Ed. 922, 926 (1830), the Supreme Court affirmed the court below, which said:

"The law regards the seizure of the thing itself as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

Waples, in his book on "Proceedings in Rem", says, page 88:

"Where only the interested owners need know, since only they could complain of want of notice, seizure is sufficiently extensive as to them."

In *Anderson National Bank v. Luckett*, 321 U. S. 233, 88 L. Ed. 692 (1943), the court said:

"The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is as-

> serted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all such proceedings, the seizure of the property is itself a form of notice of the claim asserted, to those who may claim an interest in the property. See Corn Exchange Bank v. Coler, 280 U. S. 218, 74 L. Ed. 378, 50 S. Ct. 94, holding constitutional a statute providing for no notice to the owner of a bank other than its seizure."

In the case of intangibles, there can be no physical seizure. But, as said in *Security Savings Bank v. California*, 263 U. S. 262, 68 L. Ed. 301 (1926):

> "Seizure of the res is effected by the personal service upon the bank. Thereby the res is subjected to the jurisdiction of the court."

In the present case, service of process upon the appellant was likewise a seizure of the res, which was thereby subjected to the jurisdiction of the court in the escheat proceedings.

In addition to the notice inherent in the statute itself, and the notice which seizure of the property affords, the escheat statute in the present case has directed that notice by publication be given to the owners whose whereabouts are unknown. The appellant asserts that the statutory provision itself is inadequate, because it does not spell out the form of the notice. How then, is the statutory provision deficient?

The general plan of procedure of the escheat statute is first, the filing of a petition against the defendant named in the petition, setting forth that the defendant has custody or possession of personal property subject to escheat, that the owner of the property has been unknown for fourteen years, or his whereabouts have been unknown for the said period,

or that the property has been unclaimed for fourteen years, etc.; second, the defendant is required, by order of the court, to furnish all information he may have relating to such property and the last known address of the owner; third, the order of the court may contain such other directions as the court may deem appropriate for the determination of the cause, the protection of the property or the disclosure of information pertinent to the prosection of the cause; fourth, upon the filing of the defendant's answer, the court shall, by further order, designate a time and place for hearing; fifth, "a notice containing a summary of the order designating the time and place of hearing, as approved by the court, shall be published in a manner directed by the court once a week for three successive weeks in a newspaper of general circulation designated by the court * * * Such notice shall direct that any person who may claim to be entitled to the personal property mentioned in the petition, or to any part thereof or interest therein, shall file with the court his claim in writing, at least five days prior to the time fixed for hearing * * *" Chapter 155, Session Laws of 1946 (Appendix to Appellant's Brief, 4a).

The statute then provides for a hearing upon any claim presented, the production of evidence at such hearing, determination of the cause and entry of such final decree as shall be equitable (Appendix to Appellant's Brief, 4a). It is provided further that all proceedings "shall be in conformity with the rules and practice of the Court of Chancery * * *"

It is apparent from the requirements of the statute that the summary of the notice required to be published would necessarily include a statement of the action pending, the names of the parties whose property was to be escheated, the nature of their property, and advice to the owner of the

property to come in and defend his right at the hearing. Since the advertisement must be for three successive weeks, and the claim is to be filed at least five days before the hearing, at least twenty days must elapse between the first publication and the hearing.

The appellant argues that the statutory provision for publication of the notice does not afford due process to the owners whose whereabouts are unknown. The legal proposition that the appellant seeks to have validated by this court is, that unless a notice is prescribed in all its details by the statute, and unless the publication itself follows the statute in haec verba, the notice is not due process. For this proposition, the appellant cites no supporting authority.

The statute directs that publication shall be made, and there can be no implication that such publication shall be in violation of any constitutional requirement. It is implicit in the statute rather that all constitutional requirements shall be observed.

In *Philadelphia Company v. Securities & Exchange Commission*, 175 F. 2d 808 (C. A. D. C. 1948), it is said:

> "The words 'after notice and * * * hearing' are words of art in our system of law."

It may likewise be said that the word "publication" is a word of art in our system of law.

The statute, in providing for publication of notice, directs that the notice shall be "as approved by the court". Similar language is customarily used in statutes directing publication. A very recent illustration of the use of such language is seen in the Act of Congress approved June 25, 1948, c. 646, 62 Stat. 958, amended May 24, 1949, c. 139, Sec. 99, 63 Stat. 104, 28 U. S. C. 2001. That statute deals with the sale

of realty sold under any order or decree of any court of the United States, and in subsection (b) provides for hearing "of which *notice to all interested parties shall be given by publication as the court directs* * * *" (Italics ours). The Act of Congress does no more to spell out the form and contents of the notice than does the New Jersey escheat statute. A later section of the Act of Congress, dealing with the sale of personalty, provides that the procedure shall be in accordance with the section dealing with the sale of real estate.

The contention of the appellant, if sustained, would mean that the above provision for publication "as the court directs" would be inadequate and in violation of due process.

The appellant then questions the order fixing the time and place for hearing and directing the publication of notice. The appellant complains that the order does not contain the name of any claimant nor a designation of the character of any claim.

A reading of the order (R. 53) shows that it directs that it shall be addressed to and contain "the last known names and addresses" of the owners of the property sought to be escheated, and directs that any claimant of "the personal property or any part of the personal property mentioned in the petition shall file with the court his or its claim in writing." It would have served no reasonable purpose to have set forth the names and last known addresses of the owners in the order.

The very objection of the appellant to the order shows the captious nature of its argument on due process.

The appellant finally argues that the notice, as actually published, does not comply with due process. The published notice (R. 55) sets forth the name of the court, the docket

number, the caption, the nature of the proceeding, the time and place fixed for hearing, the nature of the property (that it consists, inter alia, of shares of stock of the Standard Oil Company and dividends on shares of that company), the name and last known address of the last known owner of such property, stating the amount of the dividends owned by each such person therein named, or the number of shares of stock owned by him, and directs that any person who may claim to be entitled to the personal property mentioned in the petition, or to any part thereof or interest therein, shall file his claim with the court at least five days prior to the day fixed for hearing, and that unless cause to the contrary is shown, a decree of escheat may be entered.

If the said publication came to the attention of any person who was the owner of any of the property listed therein, it could not be said that, after reading the said publication, he was without knowledge of the fact that his property was the subject of escheat proceedings, or the extent of his property involved, or that a time and place had been fixed for hearing upon the said petition, or that if cause to the contrary were not shown, a decree in escheat would be entered. The appellant has cited no case which gives more information than the notice so published.

We think that the language used by this court in the very recent case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 94 L. Ed. 865 (1950), controls the situation here. The property here sought to be escheated is that of persons whose addresses and whereabouts are unknown. Consequently, no notice other than publication could be given as a practical matter. As to this situation, this court stated in the Mullane case as follows:

> "This court has not hesitated to approve of resort to publication as a customary substitute in another class of case where it is not reasonably possible or practicable

to give more adequate warning. Thus it has been recognized that in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree for closing their rights * * *

"However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislatures endeavoring to prescribe the best notice practicable."

The appellant complains that the statute did not require that the publication of notice be addressed to the claimants, although the publication itself stated, "Notice is hereby given to the persons named below, and to any other person or corporation claiming a beneficial interest in or ownership of the personal property described below * * *", and did then list the names and last known addresses of the last known owners.

It is sufficient to point out that in *Mullane v. Central Hanover Bank & Trust Company*, 339 U. S. 306, supra, where the statute provided for notice by publication, this was held to be sufficient, even though the statute in that case specifically provided that the notice be addressed to the claimants generally without naming them, and the publication itself did not name them. The court there said:

"We overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

The appellant asserts that publication in a newspaper published in Trenton, New Jersey, the capital of the state,

in the county in which the escheat proceedings were instituted and pending, was equivalent to no notice at all. The appellant disregards the determination of the trial court, as affirmed by the court of last resort of the state, that the notice was adequate.

A similar objection to the place of publication was made in *Security Savings Bank v. California*, 263 U. S. 282, 68 L. Ed. 301. In that case publication was made in Sacramento County, the capital seat of the state, instead of in the county in which the bank was located. This court held the objection untenable, saying:

> "The highest court of the State deemed the prescribed publication in Sacramento County reasonable notice. Obviously the question is one of local experience on which this court ought to be very slow to declare that the state legislature was wrong on its facts, or abused its discretion."

Clearly the notice, published as authorized by the statute and prepared as directed by the court, contained every reasonable detail. It is submitted that the statute was not unreasonable, arbitrary or capricious, that the means of notice selected took into account the purpose of the escheat proceeding and the circumstances which made the form of notice chosen appropriate, and that resort to publication of the notice was in keeping with due process and created no constitutional ban to the decree in escheat. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, supra.

The appellant cites *Wuchter v. Pizzutti*, 276 U. S. 13, to support its argument that if a statute fails to require adequate notice, the fact that the Court, although not required by the statute to do so, supplements the statute by providing for notice, makes valid neither the statute nor the procedure. The court below stated that the principle of *Wuch-*

ter v. Pizzutti had no application here. The reason is clear. In the Wuchter case, the court did not acquire jurisdiction over the defendant, because no process was ever served upon him; in the present case, jurisdiction was obtained by seizure of the property. In the Wuchter case, a personal judgment was entered against him. In the instant case the judgment in escheat was not in personam, as to the owners of the property, but affected the property only, and as to the property, there was notice by the very seizure. Again, in the Wuchter case, the notice that the defendant received was not related to the statute, but to supply something lacking in the statute. In the present case, everything was done as the statute required; there was publication of notice approved by the court.

The appellant also relies on *Stuart v. Palmer*, 74 N. Y. 183. It need only be pointed out that in that case the owners were not persons who were unknown or whose whereabouts were unknown.

III. The statute does not violate the constitutional prohibition against impairment of contracts.

The next argument advanced by the appellant is that the statute and the judgment impair the obligation of contracts, which it asserts, "are the basis of the claims of the respective stockholders". It asserts that the statute and the procedure provided thereunder resulting in the judgment "seriously impair and destroy the *contract rights* of the stockholders."

This argument proceeds upon the fallacious theory that the relationship between the stockholders and the corporation is a contractual one. This is not the law in New Jersey, nor is it the modern conception of the relationship. In New

Jersey, the trust relationship inheres in the corporate association. The stockholders are the owners of the corporation. The directors are the trustees of the property for the use of the stockholders, and the stockholders are themselves trustees for each other. *Breslin v. Fries Breslin*, 70 N. J. L. 274, (E. & A. 1904). See also *Neilson v. Russell*, 76 N. J. L. 40, 69 A. 476 (Supreme Ct. 1901), where the court said that stock in a New Jersey corporation is the proprietary right that a stockholder has in a corporation of the state, relating as it does to an anomalous species of intangible property that owes its existence solely to the laws of the State.

It is, therefore, inappropriate to speak of a contractual relationship between the stockholder and the corporation. The appellant contents itself with the suggestion that contracts are the basis of the right of stockholders, but makes no effort to cite authority for its assertion.

But even if a contractual relationship could be said to be established between the stockholder and the corporation, the appellant's argument falls, because escheat statutes do not violate the constitutional prohibition against impairment of the obligation of contracts.

In *Home Building & Loan Ass'n v. Blaisdell*, 290 U. S. 398, 435, 78 L. Ed. 413 (1933), it is said:

> "The question is not whether the legislative action affects the contracts incidentally or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end."

In *The Philadelphia Electric Co. Case*, 352 Pa. 457, 43 A. 2d (1945), the court said:

> "A legislative provision for escheat is a valid exercise of the police power of the State. Nor do these statutes

serve to impair the obligation of contracts. The constitutional guarantee in such connection is likewise subject to an appropriate exercise of the State's police power."

In *McSweeney v. Equitable Trust Co.*, 16 N. J. M. 193, 198 A. 529 (Supreme Ct. 1938), the court said:

"The notion that the police power cannot be exercised in any field of activity if it in any slight degree affects or impairs contracts previously entered into between individuals is purely illusory.

"The sovereign right to safeguard the general welfare of the people and to promote the common weal is paramount to the contractual rights of individuals."

In other cases it is held that the contract contemplates the exercise of the sovereign power, and that there is incorporated in the contract the anticipation of this possible use. In *Brooklyn Borough Gas Co. vs. Bennett*, 277 N. Y. S. 203, 154 Misc. 106 (Supreme Ct. 1935), it is said:

"The original contract was made in contemplation of the exercise by the State of its police power, after a lapse of time indicating abandonment, to take over the property for its preservation."

In *Attoney General v. Provident Inst. for Savings*, 201 Mass. 23, 86 N. E. 912 (1909), it is said:

"The charter granted to the Institution for Savings *and the contract between the institution and its depositors* must be assumed to have been subject to the sovereign power of the state, through proper proceedings, to take possession of property that escheats to the Commonwealth, and hold it as its own * * *.

"The contract between the corporation and each depositor, by an implied condition, was to be subject to termination by the Commonwealth whenever conditions should arise that would justify the State in exercising this power to take the property into its care for the benefit of the persons entitled to it, and when the Commonwealth, in view of these conditions, should assert this power. There is nothing in the respondent's charter that limits the right of the Commonwealth in these particulars" (Italics ours).

In *Home Building & Loan Ass'n v. Blaisdell*, 290 U. S. 398, supra, it is said:

"Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereignty is also read into contracts as a postulate of the legal order."

The reason is explained in *People, ex rel. v. Durham Realty Corp.*, 230 N. Y. 429 (1921), as follows:

"Either the rights of property and contracts must when necessary yield to the public convenience, advantage and welfare, or it must be found that the State has surrendered one of the attributes for which governments are founded."

The subject is reviewed in *East New York Savings Bank v. Hahn*, 326 U. S. 230, 232, 90 L. Ed. 34, 36 (1945), which says:

"The formal mode of reasoning by means of which this 'protective power of the State' is acknowledged is of little moment. *It may be treated as an implied condition of every contract*, and, as such, *as much part of*

the contract as though it were written into it, whereby the State's exercise of the power enforces, and does not impair, a contract.

"A more candid statement is to recognize, as was said in Manigault vs. Springs, 199 U. S. 473, 50 L. Ed. 274, that the power 'which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect * * * the general welfare of the people, and is paramount to any rights under contracts between the individuals.' Once we are in this domain of the reserve power of a State we must respect 'the wide discretion on the part of the legislature in determining what is and what is not necessary.' So far as the constitutional issued is concerned, 'the power of the State, when otherwise justified', Marcus Brown Holding Co. vs. Feldman, 256 U. S. 170, 198, is not diminished because a private contract may be affected" (Italics ours).

In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541, supra, the same question of impairment of contracts was raised. The companies in that case argued that the statute transformed into a liquidated obligation that which was previously only conditional, that it did away with the proof of certain facts which would have been required of the beneficiary, that it took away from the companies certain defenses and made it more difficult to establish other defenses. The court disregarded these assertions and said:

"We do not regard the statute as unconstitutional because of these enforced variations from the policy provisions."

The court there pointed out that unless the State was allowed to take possession of these moneys, the companies

would retain moneys contracted to be paid on condition which normally they would have been required to pay, and said:

> "The State may more properly be custodian and beneficiary of abandoned property than any person."

The judgment in escheat does not deprive the appellant of any property or of any right. Whatever rights the unknown owners had are, as declared by the judgment of escheat, vested in the State, but the appellant gives up nothing, nor are its obligations increased. The judgment of escheat merely substitutes the State for the unknown owners, and, at the same time, discharges the appellant from any further liability to the former owners. Section 10 of the escheat statute (Appendix to Appellant's Brief, 5a) provides that the decree in escheat shall automatically operate as a full, absolute and unconditional release and discharge of the appellant from any and all claim, demand or liability to any person other than the State Treasurer with respect to such property, and that the decree in escheat may be pleaded as an absolute bar to any action brought against the appellant with respect to such property by any person other than the State Treasurer.

The appellant argues that the substitution of the State for the unknown owners does not discharge the appellant's obligations to the unknown owners. It, therefore, contends that if the statute is unconstitutional as to the unknown owners, the latter will still have their remedy against the appellant, enforceable either in New Jersey or in any other jurisdiction where the appellant is suable, and it may, therefore, be twice subject to the same obligations.

The provisions of the statute are expressly severable, and by this severable provision relieving the appellant of

any obligation and impliedly making the State, as the taker of the property, liable, means that the appellant could not be sued in New Jersey. Since it cannot be sued in New Jersey on the same obligation, it cannot be sued anywhere. It is protected in this regard not only by the principles of jurisdiction, but by the full faith and credit clause of the Federal Constitution.

Article IV, Sec. 1, of the Federal Constitution provides:

> "Full faith and credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State."

The Act of Congress approved May 26, 1790, c. 11, 28 U. S. C. 687, provides for the authentication of the acts of the legislature of a State, and of the judicial proceedings of its courts.

In *Williams v. North Carolina*, 317 U. S. 287, 293, 87 L. Ed. 279, 283 (1942), it is declared that the full faith and credit clause and the Act of Congress require that the judgment of a state court shall have the same credit, validity and effect in every other court in the United States as such judgment would have in the state where it was pronounced, and that whatever pleas would be good in a suit on such judgment, and only such pleas, could be pleaded in such other court.

As has been set forth above, the proceedings in escheat are, as to the unknown owners, in the nature of proceedings in rem, and the judgment in escheat operates only upon the res. Therefore, aside from the full faith and credit clause, the judgment of the court below is conclusive.

It is made plain in *Security Savings Bank v. California*, 263 U. S. 282, supra, that seizure of the res is effected by the personal service upon the defendant, and thereby the res

is subjected to the jurisdiction of the court. Having jurisdiction in rem, the judgment of the court is conclusive. As said in *Williams v. Armroyd*, 7 Cranch (11 U. S.) 423, 432, 3 L. Ed. 392, 395 (1813):

> "The sentence of a competent court, proceeding in rem, is conclusive with respect to the thing itself, and operates as an absolute change of the property. By such sentence, the right of the former owner is lost, and a complete title given to the person who claims under the decree. No court of co-ordinate jurisdiction can examine the sentence."

In *Canada Southern R. R. Co. v. Gebhard*, 109 U. S. 527, 538, 27 L. Ed. 1020, 1024 (1883), the court said:

> "Anything done at the legal home of the corporation, under the authority of such laws (the laws of the State of incorporation), which discharges it from liability there, discharges it everywhere."

In *Isaacs v. Hobbs*, 282 U. S. 734, 75 L. Ed. 645 (1930), the court said:

> "The court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property."

In escheat proceedings, the result is the same. In *Anderson National Bank v. Luckett*, 321 U. S. 233, 242, 88 L. Ed. 692, 702, the court stated:

> "Since the bank is the debtor to its depositors, it can interpose no due process or contract clause objection to payment of the claimed deposits to the State, if the State is lawfully entitled to demand payment, for in

that case *payment of the debt to the State, under the statute, relieves the bank of the liability to its depositors.*" (Italics ours.)

The same objection, when raised in *Reading Company Case*, 352 Pa. 457, 43 A. 2d 116 (1945), was dismissed by the court, which said there was no danger that the defendant there would be subjected to double liability.

IV. Shares of capital stock of a New Jersey Corporation and dividends on such shares of stock are subject to escheat to the State of New Jersey.

The appellant asserts that neither the dividends on shares of its capital stock nor the shares of capital stock escheated by the judgment had a situs in New Jersey for the purpose of escheat.

The determination of situs of, or the control which the State of New Jersey has over, the shares of stock and dividends is not a question involving constitutionality, but is a question of fact. The court of last resort of New Jersey having determined the fact, there is nothing for this Court to review on this question.

In *Portland R. L. & P. Co. v. Railroad Commission*, 229 U. S. 397, 412, 57 L. Ed. 1248, 1258 (1913), it is said:

"Ordinarily, in cases which come before us for review, this court accepts the facts as found by the State Supreme Court. An examination of the record in this case convinces us that the conclusions reached by the court do not bring the case within that exceptional class where this court will reexamine the facts found, with a view to ascertaining the correctness of the con-

clusions reached * * * This court does not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the state having jurisdiction of the subject."

In *Grayson v. Harris*, 267 U. S. 352, 358, 69 L. Ed. 652, 656 (1924), the appellant argued that the evidence failed to show that the plaintiffs in error were Greek citizens. This court said that since the trial court found they were, and the state supreme court expressly affirmed the finding, the finding of fact would not be considered, because that finding was not so intermingled with the conclusion of law in respect of the federal right as to cause it necessary to consider the matter of fact in order to pass upon the federal question. This court said (page 358):

> "In other words, the finding simply established a condition, not as a basis upon which to rest a decision of the question of Federal right one way or the other, but upon which that question became an issue for consideration and determination. In such case, the ordinary rule applies that the decision of the state court upon a question of fact cannot be made the subject of inquiry here."

In the present case also, the effect of the finding of situs and control over the shares and dividends simply established a condition, not as a basis upon which to rest a decision of the question of federal right one way or the other, but upon which that question became an issue for consideration and determination. As in the Grayson case, so here, the ordinary rule applies.

However, authorities are not wanting to establish the correctness of the determination of the state court.

It has long been recognized that the situs of shares of

stock in a corporation is in the State in which the corporation was chartered, and that such shares of stock constitute property within the said State. The principle was thus stated in *Neilson vs. Russell*, 76 N. J. L. 40, 69 A. 476 (Supreme Ct. 1901):

> *"Stock in a New Jersey Corporation*, i. e., the proprietary right that a stockholder has in a corporation of this State, relating as such proprietary right does to an anomalous species of intangible property that owes its existence solely to the laws of this State, *is itself property within the State in the sense that it has an inherent and abiding situs here for all matters appertaining to sovereignty"* (Italics ours).

In *Greves vs. Shaw*, 173 Mass. 205, 53 N. E. 372 (Supreme Judicial Ct. 1898), the court said:

> "There can be no room for doubt that stock in a corporation organized under the laws of the Commonwealth is property within the jurisdiction of the Commonwealth."

Tax Commission vs. Aldrich, 316 U. S. 174, 86 L. Ed. 1358. 1370 (1942) explains why this is so, saying:

> "The corporation owes its existence to Utah. Utah defines the nature and extent of the shareholders' interest in the corporation. Utah law affords protection for these rights. Utah has power over the transfer by the corporation of its shares of stock."

The rights to dividends on the capital stock of a corporation are likewise defined by the law of the State of incorporation. In *Lick vs. U. S. Rubber Co.*, 39 F. Supp. 675 (D. C. N. J. 1941), in which were involved the rights to dividends

as between preferred and common stockholders, the court said:

> "It is conceded that the rights of stockholders, both common and preferred, are dependent upon, and must be determined under, the laws of the corporate domicile." Affirmed, 123 F. 2d 145 (C. A. 3, 1941).

In 18 *C. J. S.* 1104, Title "Corporations", Sec. 463, it is stated:

> "The law of the corporate domicile controls as to the declaration of dividends."

The State of New Jersey, like many other states, has provided that a corporation created by it shall not pay dividends except from surplus or from the net profits of its business. L. 1896, ch. 135, Sec. 30, p. 286, as amended L. 1930, ch. 120, Sec. 1, p. 376, N. J. S. A. 14:8-19.

The shareholders owe their right to dividends to the state law, just as do the shares of stock, and the dividends are likewise property within the state for all matters appertaining to sovereignty.

Even if shares of stock and dividends thereon be treated, for the purpose of situs, like other obligations of the corporation, it must also be concluded that their situs is in the state of incorporation.

The appellant, a corporation created under the laws of the State of New Jersey, has its domicile in New Jersey. *Southern Railroad Co. vs. Allison*, 190 U. S. 326, 47 L. Ed. 1079 (1902); *Newark Fire Insurance Co. vs. State Board*, 307 U. S. 313, 83 L. Ed. 1312 (1938). Its debts and obligations therefore have their situs in New Jersey.

Situs is essentially a question of fact, and much confusion may and does arise by attempting analogies. The criteria

for determination of tangible property may not constitute criteria for determining the situs of intangible property, which can have no actual situs anywhere in the sense that real or tangible chattels have.

A clear exposition of the principle as to situs of intangibles is given in 31 Harvard Law Review 905, wherein it is said:

> "Jurisdiction over tangible property is dependent upon the physical presence of the property, for it is at such place that the power of control exists. But the important thing to observe is, that it is the power of control that is the basis of jurisdiction, and not location, and it is this power of control which gives whatever significance there is to the legal concept 'situs'.
>
> 907. "Where the property is intangible, however, the element of location is absent, but power of control may still exist and constitute the basis of jurisdiction. The failure to observe that it is this element of control, and not the quality of occupying space, that gives 'situs' its significance, has led to the greatest confusion in the decisions relating to jurisdiction over intangible property in the form of debts * * *"

The situs in New Jersey of shares of stock in a New Jersey corporation and the dividends declared thereon, is not affected by the fact that the owners do not reside within the State. As said in *Neilson vs. Russell*, 76 N. J. L. 40, supra:

> "Such proprietary right, although it is personal property as regards the act of its owner, is from its nature and because of its inherent situs unaffected as regards the acts of the sovereign by the circumstance that the domicile of its former owner was elsewhere than in this State. In fine, we think that the sovereign power to which a corporation owes its existence can never

be wholly detached from it, and is not estranged from its creature by the circumstance that the owners of the shares of stock thus created reside in one place rather than in another."

To the same effect is *Pennington vs. Fourth National Bank*, 243 U. S. 269, 61 L. Ed. 713 (1917), which states:

"The Fourteenth Amendment did not, in granting due process of law, abridge the jurisdiction which a State possessed over property within its borders, regardless of the residence or non-residence of the owner. That jurisdiction extends alike to tangible and to intangible property. Indebtedness from a resident to a non-resident—of which bank deposits are an example—is property within the State."

In *Corry vs. Baltimore*, 196 U. S. 466, 49 L. Ed. 556 (1905), the court said:

"The sovereignty which creates a corporation has the incidental power to impose reasonable regulations concerning the ownership of stock therein; and a regulation establishing the situs of stock for the purpose of taxation and compelling the corporation to pay the tax on behalf of the corporation is not unreasonable regulation.

"Applying that principle, it follows that a regulation of that character, prescribed by a state, is not an exercise of the taxing power of the state over persons and things not subject to its jurisdiction."

In *Schuylkill Trust Co. vs. Pennsylvania*, 302 U. S. 506, 82 L. Ed. 392 (1938), the court considered the effect of non-residence of intangibles upon the jurisdiction of a state over such intangibles, and said:

"We think these differences are unimportant in respect to the principles involved."

The principle has been applied in escheat cases. In *Security Savings Bank vs. California*, 263 U. S. 282, 63 L. Ed. 301 (1926), the court sustained a California statute providing for escheat of deposits in California banks, not only as to deposits of residents, but to those of non-residents as well.

The latter case was followed in *Philadelphia Electric Company Case*, 352 Pa. 457 (Supreme Ct. 1945), which said:

"The power of the legislature to render property of this kind (including shares of stock of the appellant therein, a Pennsylvania corporation, and dividends on its stock) subject to escheat in favor of this Commonwealth is clear * * *.

"The Supreme Court of the United States has confirmed the jurisdiction of a State court over intangibles and its power to subject them to escheat even as against possible non-residents."

In re Hull Copper Co., 46 Ariz. 270, 50 P. 2d 560 (Supreme Ct. 1935), a similar statute was sustained. The court there said:

"It is not obnoxious to any provision of the Federal Constitution, for it applies only to corporations incorporated under the laws of Arizona, and we think that so far as such corporations are concerned, it clearly lies within the power of the State to regulate the disposition of any unclaimed shares and dividends thereof."

See also *In re Montello Salt Co.*, 88 Utah 283, 53 P. 2d 727 (Supreme Ct. 1936).

The appellant seeks to distinguish the instant case from other cases in which this Court has affirmed the power of the State to escheat intangible property. It cites *Security Savings Bank vs. State of California*, 263 U. S. 282; *Anderson National Bank vs. Luckett*, 321 U. S. 233, and *Connecticut Mutual Life Ins. Co. vs. Moore*, 333 U. S. 541, in all of which the State was held to have power to escheat intangibles over which it had dominion. The ultimate fact was the same in those cases as in the present case, that the State had control or dominion over the intangibles. Because the State in each of those cases had such control or dominion of the intangibles, the property was held to be subject to escheat. In the instant case the appellant is a New Jersey corporation; and the State has complete dominion over it. *Newark Fire Insurance Co. vs. State Board*, 307 U. S. 313, 83 L. Ed. 1312. The State therefore has power or dominion or control over the corporation's shares and dividends comprising the intangibles here. Having such power or dominion or control, it has the power of escheat of such intangibles.

The appellant argues that the certificate of stock is the property here involved, and that since it does not have possession of the certificate, there could be no seizure of the property involved. That position was rejected long ago in *Jellenik v. Huron Copper Mining Company*, 177 U. S. 1, 13, 44 L. Ed. 647, 651 (1899), wherein it was said:

> "As the habitation or domicile of the company is and must be in the state that created it, the property represented by the certificates of stock may be deemed to be held by the company within the state whose creature it is, whenever it is sought by suit to determine who the real owner is. This principle is not affected by the fact that the defendant is authorized by the laws of

Michigan to have an office in another state, at which a book showing the transfers of stock may be kept."

The appellant seeks to escape from the impact of the above case by pointing out that the State of New Jersey adopted the Uniform Stock Transfer Act, and interprets that act to provide that the certificate of stock is the property, rather than the stockholder's muniment of title. The decision of the Supreme Court of New Jersey in the present case, however, forecloses any question as to the effect of the Uniform Stock Transfer Act. This court will not review the interpretation of a statute by the court of last resort of the State enacting such statute.

Finally, the appellant argues that corporate shares may have a situs in two places, and it seeks thereby to debar the escheat of the property by the State of New Jersey. In this argument the appellant discloses its real purpose. If it can defeat escheat by the State of New Jersey of the shares of stock and dividends on the ground that though situs may be in New Jersey, it has another situs elsewhere, it can also defeat the escheat in the other jurisdiction by pointing to the situs in New Jersey. By this shifting of positions, the appellant would, if it were successful, establish a right superior to the sovereign which created it, and superior to any other sovereign. This would be unthinkable.

CONCLUSION.

The enactment of the escheat statute by the legislature of New Jersey was the wise and sound exercise of a power within the province of the state and inherent in its sovereignty. The legislature did not create the power, but did prescribe the terms and conditions under which it should operate. Neither the due process clause nor the contract clause of the Federal Constitution was intended to shackle or encircle the state in the assertion and performance of its governmental functions. The judicial procedure provided by the escheat statute, including notice of the proceedings and opportunity to be heard, do not offend these constitutional limitations.

The appellant states that the decision of this case will govern more than one hundred cases now pending in the New Jersey courts. It is also true that the decision in this case will govern the exercise of the escheat power in the forty-eight states. The appellant's position would benefit corporations chartered by the forty-eight states, and would deny to the states the benefits which their creatures would enjoy. The law must not be astute to accomplish this result.

To deny to the states the power to escheat intangible personal property such as corporate shares and dividends would, as a practical matter, have but one effect. The corporation would be empowered to enrich itself by obtaining the property of its former stockholders to which it has no justifiable right, in derogation of the sovereign power of the state to which it owes its existence, and to which, under other circumstances, it appeals for protection.

The proposition has only to be stated to be rejected as legally and morally inadmissible.

It is submitted that the judgment of the court below should be affirmed.

Respectfully submitted,

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Appendix

Statutes providing for escheat of personal property upon death of the owner intestate and leaving no heirs, next of kin, or surviving spouse.

Alabama—Statutes, Title 16, Chapter 2, "Escheats". Sec. 25.
Alaska—Code of Civil Procedure, Chapter 8, Title "Escheats", Sec. 57-8-1.

California—Political Code, Part 1, Title 1, Chapter IV, Sec. 41.

Delaware—Code of 1915.

Georgia—Code Annotated, Chapter 85-11.

Illinois—Laws—Probate & Distribution, Sec. 110-258.
Indiana—Laws, Sec. 6-2349.
Iowa—Laws, Sec. 636.50.

Maine—Revised Statutes, Chapter 156, Sec. 1, VIII, Sec. 20.
Massachusetts—Act of June 25, 1936, P. L. 428, Laws, Chapter 190, Sec. 2.
Montana—Sec. 91.502.

Nebraska—Laws, Chapter 30, Art. 1, Sec. 102, Sec. 30-103.
Nevada—Compiled Laws, Sec. 9882.311.
New Hampshire—(Uses word accrue, instead of escheat).
New Mexico—Chapter 31, Sec. 31-121.

Minnesota—Statutes Annotated, Probate Code, Ch. 525-16.
Mississippi—Code of 1942, Chapter 2, Sec. 480.
Missouri—Revised Statutes, Ch. 3, Art. 1, Sec. 620.

North Dakota—Title 30, Sec. 25.

Ohio—Page's General Laws, Sec. 10503-4.

Oklahoma—Compiled Laws, Annotated, Sec. 21-101.

South Carolina—Code of 1942, Vol. 4, Title 40, Ch. 172, Art. 2, Sec. 8854.

South Dakota—Code of 1939, Title "Escheats", Chapter 37-42.

Vermont—Revision of 1947, Chapter 147, "Escheats", Sec. 3055.

West Virginia—Code of 1949, Sec. 3599.

The states named below provide for escheat of personal property upon death of the owners, intestate and without leaving anyone to inherit, but provide also for escheat of property of absentees without proof of death, but upon abandonment, etc.

Arkansas—Act of 1949, Sec. 50-604,

> Where property has been unclaimed, forgotten or lost by any person, including a former owner for seven years, a presumption arises that such property is subject to escheat as abandoned property.

Arizona—Code, Article 11, Title "Escheat", Sec. 27-101,

> If any person shall be absent for seven years, and is not known to exist, such estate shall escheat to and vest in the state.

California—Political Code, Part 1, Title 1, Chapter IV, Sec. 4,

> All property, real and personal, within the limits of the state, which does not belong to any person, belongs to the state.
>
> Part 3, Title 1, Ch. 3.

Requires the attorney general to institute general investigation for discovery of all real and personal property which should escheat to the state.

Connecticut—Revision of 1949, Sec. 149,

Any property, the owner of which has not exercised any right of ownership or possession thereof or claim thereto for seven years and the whereabouts of such owner being unknown to the person having custody or possession thereof, shall escheat to the state.

Florida—Laws of 1947, c. 24333, Sec. 1,

Provides for escheat of moneys deposited in registry of federal courts in Florida unclaimed for seven years.

Kansas—Sec. 58-401,

Provides for escheat of moneys or property in custody of court and unclaimed for two years after final determination of action.

Kentucky—Revised Statutes of 1942, Title "Escheats", Sec. 393.090,

All dividends, stocks, bonds, money, credits and claims, and all intangible property held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary within ten years from the time the holder, trustee, debtor or other person became obligated to return them to the proper owner or claimant.

Minnesota—Statutes Annotated, Probate Code, Ch. 48.522,

When any person abandons any funds or other property with any banking institution, the same shall escheat to the state.

Missouri—Revised Statutes, Ch. 3, Art. 1, Sec. 620,

After the owner entitled to any moneys, refunds of

rates or premiums, or by reason of any litigation concerning rates, refunds, fares, or charges collected by any person or corporation in the State of Missouri, paid into any court of Missouri, shall be and remain unknown or the whereabouts of the owner are unknown, or the moneys are unclaimed for five years, such moneys shall be escheatable to the state.

New York—McKinney's Consolidated Laws of New York, Vol. 2½A, Abandoned Property, Sec. 1200.

All moneys or other property paid into or deposited in custody or under control of a court of the United States in New York unclaimed for statutory period are declared to be escheated to state.

North Carolina—Sec. 116-25,

Unpaid and unclaimed salary, wages or other compensation due to any person from any person or corporation engaged in construction work in North Carolina are declared escheated.

Oregon—Compiled Laws Annotated, Sec. 21-201,

Unclaimed back deposits are to be treated like property of estates which have escheated.

Pennsylvania—Act of June 7, 1915, P. L. 878. Sec. 7, as amended, 27 P. S. 282,

After the owner entitled to any of the following moneys or property shall be and remain unknown or the whereabouts thereof shall have been unknown for seven years, such moneys or property shall be escheatable to the Commonwealth.

Tennessee—William's Tennessee Code Vol. 5—Title II, Chapter 10, "Escheats",

Provides for escheat of moneys deposited in custody of federal court and unclaimed.

Texas—Vernon's Civil Statutes, Sec. 3272,

Where the owner of any real or personal property is absent for seven years and is not known to exist, leaving no heirs or devisees, such estate shall escheat to the state.

Utah—Code, Sec. 7-2-17,

All deposits and dividends (of banks which are liquidated) for which no claim has been made for five years after order of final distribution, shall escheat to the state.

Washington—Remington's Revised Statutes, Sec. 1715-1,

Provides for administration of estates of absentees, including real and personal property.

Sec. 1715-10,

"Whenever the owner of such property * * * shall have been absent and unheard from for fifteen years, and no heirs have appeared and no will of the absentee has been presented * * * the property shall be escheated * * *"

Wyoming—Compiled Statutes, Sec. 22.203,

All property, real and personal, within the limits of this State, which does not belong to any person, shall belong to the State.

New Jersey—Laws 1946, c. 155, as amended Laws 1947, c. 357,

Whenever the owner of or person entitled to any property has been or shall be unknown for 14 years, or his whereabouts unknown for 14 years, or whenever any personal property shall remain unclaimed for 14 years, such personal property shall escheat to the State.